IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

TUESDAY, THE 13TH FEBRUARY 2007 / 24TH MAGHA 1928

WP(C).No. 29731 of 2006(M)

PETITIONER:

P.KARTHIYAYANI, MANAGER,
KADAMBUR HIGHER SECONDARY SCHOOL,
KADAMBUR, EDAKKAD, KANNUR DISTRICT.

BY ADV. SRI.GEORGE POONTHOTTAM
SMT.PRINCY XAVIER

RESPONDENTS:
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1. STATE OF KERALA, REPRESENTED BY THE SECRETARY TO GOVERNMENT, DEPARTMENT OF GENERAL EDUCATION, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.

2. THE DIRECTOR OF PUBLIC INSTRUCTION, THIRUVANANTHAPURAM.

3. THE DEPUTY DIRECTOR OF EDUCATION, KANNUR.

4. SRI.P.M.VINODKUMAR, KAITHERIKANDY HOUSE, MUTTANNOOR, PATTANOOR PO, KANNUR.

BY ADV. SRI.V.A.MUHAMMED FOR R4
SRI.K.E.HAMZA
GOVERNMENT PLEADER SMT.M.R.SREELATHA FOR R1

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 13/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC NO. 29731/2006

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1: TRUE COPY OF THE REPORT DATED 18.2.2005 SUBMITTED BY THE PRINCIPAL.

EXT.P2: TRUE COPY OF THE MEMO OF CHARGES GIVEN TO THE 3RD RESPONDENT DATED 9.6.2005.

EXT.P3: TRUE COPY OF THE ENQUIRY REPORT GIVEN BY THE DEO, KANNUR.

EXT.P4: TRUE COPY OF THE SHOW CAUSE NOTICE NO.A-04/05 DATED 2.8.2005.

EXT.P5: TRUE COPY OF THE REPLY DATED 8.8.05 GIVEN BY THE 3RD RESPONDENT TO THE SHOW CAUSE NOTICE.

EXT.P6: TRUE COPY OF THE LETTER DATED GIVEN TO THE DEPUTY DIRECTOR OF EDUCATION, KANNUR.

EXT.P7: TRUE COPY OF THE ORDER NO.B4/18489/2005/KDIS DATED 5.10.2005.

EXT.P8: TRUE COPY OF THE ORDER NO.A-04/05 DATED 18.5.2005.

EXT.P9: TRUE COPY OF THE ORDER NO.VI.79474/05/DPI DTED 25.4.2006.

EXT.P10: TRUE COPY OF THE REVISION FILED BY THE PETITIONER DATED 18.5.2006.

EXT.P11: TRUE COPY OF THE JUDGMENT IN WP(C) NO.13189/2006 DATED 29.5.2006.

EXT.P12: TRUE COPY OF THE ARGUMENT NOTE SUBMITTED BY THE COUNSEL FOR THE REVISION PETITIONER DATED 4.7.2006 BEFORE THE GOVERNMENT OF KERALA, DEPARTMENT OF GENERAL EDUCATION, TRIVANDRUM.

EXT.P13: TRUE COPY OF TE APPLICATION FOR EXTENSION OF TIME FILED BY THE GOVRNMENT IN WP(C) NO.13189/2006 ON 2.8.2006.

EXT.P14: TRUE COPY OF THE G.O(RT) NO.4704/2006/GE DATED 30.10.2006 ALONG WITH THE REQUEST GIVEN BY THE 4TH RESPONDENT DATED 4.11.2006.

WPC NO.29731/2006

EXT.P15: TRUE COPY OF THE APPEAL DATED 26.10.2005 FILED BY THE 4TH RESPONDENT BEFORE the DIRECTOR OF PUBLIC INSTRUCTION, THIRUVANANTHAPURAM.

EXT.P16: TRUE COPY OF THE REMARKS GIVEN BY THE DEO, KANNUR BY COMMUNICATION NO.B4/2124/2005 DATED 22.12.2005

EXHIBITS OF R4

EXHIBIT R4(a): TRUE COPY OF THE ORDER NO.EM3/163775/02/DPI/D.DIS. OF THE ADDL. DIRECTOR OF PUBLIC INSTRUCTION.

EXHIBIT R4(b): TRUE COPY OF THE PROCEEDINGS NO.A-04/05 OF THE MANAGER.

EXHIBIT R4(c): TRUE COPY OF THE HEARING NOTICE NO.27098/A2/06/G.EDN. OF THE GOVT.

//TRUE COPY//

P.A. TO JUDGE

K. M. JOSEPH, J.

W.P.C. NO. 29731 OF 2006 M

Dated this the 13th February, 2007

JUDGMENT

Case of petitioner, in brief, is as follows:

Petitioner is the Manager of an Aided Higher Secondary School having large number of students. It is increased after 1996 - 1997, when petitioner took over management and the School is one of best Schools in Kannur District. A written complaint was received by the Principal on 17.2.2005 alleging sexual abuse of the body of a minor girl student by fourth respondent who was a class teacher. After discreet enquiry, Ext.P1 Report was given by the Principal which led to the suspension of fourth respondent and which is approved by the Officials. Ext.P2 is the memo of charges. Ext.P3 is the Enquiry Report of the DEO. He found that the behaviour of the fourth respondent teacher is most objectionable. He also found that the teacher has forged documents and produced the same before Court. His latter finding was on the basis of the Order of this

Court directing consideration of genuineness of certain documents produced in this Court. The enquiry was conducted in the presence of fourth respondent who appeared along with counsel. Ext.P4 is a show cause notice in respect of the proposed punishment. He gave Ext.P5 reply. Finding the reply unsatisfactory, by Ext.P6, sanction was sought for imposing major penalty of dismissal. Sanction was accorded by second respondent, Deputy Director by Ext.P7. Fourth respondent was dismissed from service vide Ext.P8 dated 18.10.2005. Fourth respondent preferred appeal before second respondent, DPI. He came to be heard by the Addl. DPI who ordered reinstatement after setting aside the Enquiry Report and dismissal order. Petitioner preferred Ext.P10 Revision Petition. This Court by Ext.P11, directed consideration of Ext.P10 and also directed the impugned order to be kept in abeyance. Ext.P12 is the argument note submitted by petitioner. Ext.P13 is an Affidavit filed on behalf of first respondent relied on to show that though the matter was heard as directed by this Court, the decision was not

taken by the authority who heard. Ext.P14 is the order passed by first respondent holding the Enquiry Report of the DEO are all perverse, arbitrary and unfair. It is stated that the enquiry is vitiated by violation of Rules and principles of natural justice, and that Kum. Razlin Abdul Nazer is only a tool in the hands of the Manager. After finding the enquiry bad, the third respondent, Deputy Director of Education was directed to conduct another enquiry and with a further direction to reinstate the fourth respondent. Ext.P15 is produced as an Appeal filed by fourth respondent and it is alleged that the hearing of the Appeal was done without furnishing copy of the Appeal. Ext.P16 is the remarks of the DEO furnished to the DPI on filing the Appeal as Ext.P15. Petitioner challenges Exts.P9 and P14 and seeks a declaration, inter alia, to the effect that respondents 1 and 2 have exceeded their powers and to declare that the Appeal against Ext.P15 was illegally entertained and a further declaration is also sought for, on the lines of the contentions taken.

2. A Counter Affidavit has been filed by fourth respondent, wherein, he seeks to defend the impugned action.

3. I have heard the learned counsel appearing for the parties. Counsel for petitioner reiterated the facts already referred to. He would contend that there is absolutely no basis for directing a fresh enquiry to be held. According to him, this is a case where the complaints were received against fourth respondent from girl students. He reminded this Court that fourth respondent is a teacher. The students in question were minor girl students. He would submit that four out of five girl students who have given statements retracted their statements. He would point out that one girl student has stuck to her guns and reiterated the original case as set up before the Principal in the preliminary enquiry. He would submit that the statement given by one minor girl was clearly clinching to bring home guilt of the obnoxious behaviour of fourth respondent. He would submit that the Authorities in the impugned orders had clearly acted illegally in interfering with the matter. He took me

through the impugned orders. He took me through Ext.P16 which is the Report of the DEO who conducted the enquiry. The DEO in Ext.P16, in the relevant portion, says as follows:

He would contend that the defect noted is that there is a violation of the right with the teacher to cross-examine the student in question. Ext.P16 would show that the teacher was very much present on the date of the enquiry, but he was accompanied by counsel. He would contend that under sub-rule (5) of Rule 75 of Chapter XIV A KER, a teacher cannot be allowed to be represented by counsel. Ext.P16 would show, according to him, that opportunity was indeed given to fourth respondent to cross-examine the girl student who gave the statement. Relying on the provisions of sub-rule (6) of Rule 75 of Chapter XIV A KER, he would point out that the right given is only the right to cross-examine. He would submit that on a perusal of Ext.P16, there is nothing to show that the fourth respondent had requested the Enquiry Officer for an opportunity to cross-examine after his request to be represented by counsel was declined. When the fourth respondent did not choose to avail of the right to cross-examine, he submits, it is clear that

there is no violation of sub-rule (6) of Rule 75 Chapter XIV A KER. He would point out, therefore, that it should not be open to fourth respondent to contend that the enquiry is vitiated and there should be a fresh enquiry, particularly in a case where a minor girl student mustered up the courage to speak out against her own teacher. He would point out the prejudice that would be caused in the holding of a fresh enquiry with inevitable need to again call the hapless witness to give evidence in a matter, particularly of the nature in question. He relied on the following decisions:

1) Bhupinder Sharma v. State of Himachal Pradesh ((2003) 8 SCC 551).

2) State of U.P. v. Sheo Shanker Lal Srivastava And Others ((2006) 3 SCC 276).

3) Bank of India v. Apurba Kumar Saha ((1994) 2 SCC 615).

4) The State of Punjab v. Dewan Chuni Lal, S/o.Late R.S. Shiv Narain (1970 (1) SCC 479).

3. The State of Punjab v. Dewan Chuni Lal, S/o. Late R.S.

Shiv Narain ((1970 1 SCC 479) was a case of an enquiry resulting in dismisal of the respondent from service. In fact, the Apex Court confirmed the finding of the High Court that the Enquiry Officer should not have neglected to summon the five Officers who made the Reports about the respondent and were available for examination at the enquiry. In Bank of India v. Apurba Kumar Saha ((1994) 2 SCC 615), the Apex Court found that there was no violation of natural justice, as the records showed that the party had avoided filing of written explanation for the charges of misconduct and also had, for no valid reason, refused to participate in the disciplinary proceedings. The Court held as follows:

> *"A bank employee who had refused to avail of the opportunities provided to him in a disciplinary proceedings of defending himself against the charges of misconduct involving his integrity and dishonesty, cannot be permitted to complain later that he had been denied a reasonable opportunity of defending himself and the disciplinary proceedings conducted against him had resulted in violation of principles of*

natural justice."

Bhupinder Sharma v. State of Himachal Pradesh ((2003) 8 SCC 551) was a case of a gang rape. The Apex Court held as follows:

> *"A woman or a girl who is raped is not an accomplice. Corroboration is not the sine qua non for conviction in a rape case. To insist on corroboration except in the rarest of rare cases is to equate one who is a victim of the lust of another with an accomplice to a crime and thereby insult womanhood. It would be adding insult to injury to tell a woman that her claim of rape will not be believed unless it is corroborated in material particulars as in the case of an accomplice to a crime. Why should the evidence of the girl or the woman who complains of rape or sexual molestation be viewed with the aid of spectacles fitted with lenses tinged with doubt, disbelief or suspicion ? The plea about lack of corroboration has no substance."*

Finally, in State of U.P. v. Sheo Shanker Lal Srivastava And

Others ((2006) 3 SCC 276), the Apex Court was dealing with a case of a Stenographer who was deputed to Lok Ayukta and he was charged. In the enquiry, the delinquent wanted to engage a lawyer which was declined, inter alia, on the ground that the Department has not engaged any lawyer and the charges levelled against him were simple in nature. The Lok Ayukta itself conducted the disciplinary proceedings. The Enquiry Officer noticed the dilatory tactics adopted by the appellant. The Court noted that the delinquent did not cross-examine the Deputy Secretary in the office of the Lok Ayukta, as his request to adjourn the proceedings was declined. The Court found that the delinquent did not examine himself despite several opportunities were given to him. The Court found that the delinquent did not cross-examine the only witness available and he did not examine himself, nor any other defence witness, and the Court found that there was no infirmity. Counsel for petitioner also contended that pursuant to a Review Petition, a learned Single Judge had directed the Enquiry Officer to consider the genuineness of

certain documents and it was in the said context that the Enquiry Officer entered a finding that the letter allegedly written by the Principal to the delinquent was forged. It is in fact pointed out that a private complaint filed by the Principal, is pending consideration before a Magistrate.

4. Per contra, learned Government Pleader would defend the order. She would contend that there was no discussion of the effect of four girl students retracting from their earlier stand in the preliminary enquiry. She would point out that the statements which were given earlier were on the same lines indicating that it was given under dictation. She invited my attention to the statement of one Nishima. She was a student who has originally filed a statement against fourth respondent, but she withdrew it at the stage of enquiry. She referred to the statement given by Nishima at page 261 of the file which was made available. In the same, Nishima would say that on a day when the class was going where the subject related to the atrocities committed by men against women, Kum. Razlin Abdul

Nazar got up and asked the teacher the question, then what about teachers, and are not the teachers also the same. Upon being questioned as to why she said that, her reply was that fourth respondent would not beat girl students with stick, but instead, would pat the girl students at the back and the like. She would say that the girl students were shocked. It is further stated by her that the Principal, later on called them and asked about fourth respondent as to how/whether fourth respondent would pat on the back, how far his hand would go, etc. and they were perturbed. Kum. Kavitha said that he used to hit on the back and apart from that, they never felt that way. They would further say that they never felt it would be sex harassment in the mind of the Principal. Learned Government Pleader would submit that the orders are validly passed.

5. Learned counsel appearing on behalf of fourth respondent also supports the orders. He took me through the orders to show that the charges were baseless and that the fact that the four students who had given complaints have withdrawn

the complaints itself would show that the case was concocted. He would further submit that illegalities were found in the conduct of the enquiry. He referred to Note 2 of sub-rule (6) of Rule 75 of Chapter XIV A KER. He pointed out that the Note provides that the Enquiry Officer should examine the witness in the presence of the teacher and give an opportunity to cross-examine the witness. Further, it is pointed out with reference to sub-rules (8) and (9) that records are to be maintained which are to include certain aspects. He would submit that there is no record and there was nothing to indicate that fourth respondent has waived his right and while it may be true that fourth respondent committed a mistake in attempting to be represented by counsel, which was impermissible, he should have been asked whether he wished to cross-examine and whether he was giving up his right. He also relied on a decision of the learned Single Judge of this Court in Radhamma v. Thulasi Bai (2006 (3) KLT 909).

6. In Ext.P9 order, the Officer has noted that the other

students have not appeared for the enquiry and in fact Kum. Nishima had stated that the allegations are baseless. It is noted out that on examination of the signature of Razlin Abdul Nazar put on 11.7.2005 (date of enquiry) and the signature affixed on 17.2.2005 (while filing complaint) were found differing. It is further noted that the hand-writing in the petition of Razlin Nazar and the other four students prepared by the HM are more or less the same, and that it is stated that the records show that the other four students had signed on the questionnaire and answers prepared by the HM and there was no mention about the statement of other students in the Enquiry Report. In Ext.P14, the Government has taken the view that the Educational Officer has not met the delinquent teacher or the girl students other than Kum. Razlin Nazar. It is also found that he has not put his signature and seal in the Report of the preliminary enquiry. It is further stated that the DEO has not obtained statements from other students and neither the Staff Secretary or Staff Executive or PTA were informed about by

any such girl students. It is found that parents have vehemently objected to the dismissal of the teacher. There was no discussion about the letters from girl students in favour of Shri Vinodkumar, it is stated. In paragraph 22 of Ext.P14 it is stated as follows:

> *"22. It has also become evident that the plea of the delinquent teacher is that it is a false charge concocted by the Manager. It is a conspiracy and that he could not cross examine the main witness and that he could not establish his innocence because of the non cooperation of the enquiry officer. However the fact remains that the victim, an adolescent girl, has a second time given a statement about the offence, which amounts to almost sexual assault and reconfirmed it. As the law stands it cannot be just disbelieved and dismissed without sufficient reason. The Principal, the Manager, the DEO and the DDE accepted it as a fact. The conspiracy theory advanced by the delinquent officer is not established with sufficient evidence*

> *or strong motive on the part of the Principal or the Manager. The Manager did not initiate the enquiry or the complaint. The conspiracy remains only a counter allegation. The delinquent is also not seen without support, clout or influence."*

Learned counsel for fourth respondent would remind me that I am exercising powers of judicial review and I am to appreciate the fact that there was concurrent finding by the DPI and Government that the enquiry was not sustainable.

7. The principal question to be decided is, of course, whether there is a violation of Rule 75 of Chapter XIV A KER. No doubt, learned counsel for petitioner would contend that a perusal of the statement filed by fourth respondent on 11.7.2005, namely on the date of the enquiry and on the day on which Kum. Razlin Nazar had given the statement, there is no complaint about the denial of right to cross-examine and there was no request on the part of fourth respondent to grant an opportunity to cross-examine Kum. Razlin Nazar. I am not much impressed by that argument based on the statement filed by fourth

respondent to be found at page 261 of the file. Apparently, it appears to be in the form of a written statement. Therein, fourth respondent set up his contentions. Apparently, it was given prior to the evidence of Kum. Razlin Nazar being taken. No doubt, counsel for petitioner would point out that the circumstance that in the statement fourth respondent requested that an enquiry be made calling for all the students would show that it was made only after the evidence was taken, for the reason that it is only then that it would have been known that the other students were not coming for the enquiry or had given statements in favour of fourth respondent. I am not inclined to view it in that fashion. Apparently, fourth respondent wanted a full enquiry to be conducted involving the other students also.

8. Ext.P16, which I have already referred to, is a version of the DEO as to the complaint based on denial of right to cross-examine. There are no other records as such maintained or brought to my notice by the parties from which I could ascertain as to whether there was a request on the part of fourth

respondent to cross-examine the student in question when the right to be represented by counsel was denied or not, and further as to whether the DEO had in fact asked the fourth respondent whether he wishes to cross-examine the witness by himself. Undoubtedly, learned counsel for petitioner is correct in contending that fourth respondent did not have any right to be represented by counsel. Also it is true that the statement of Kum. Razlin Nazar does tend to implicate fourth respondent of conduct which ill-behoves a teacher. However, I am of the view that in the facts of this case, particularly when four out of five girl students have chosen not to toe the line which they have purportedly taken at the stage of the preliminary enquiry and what is more one has expressed her disquiet at arraigning the fourth respondent of the charges against him, the validity of the statement of the only witness is all the more crucial for the teacher. As already pointed out, there is nothing to show whether the Enquiry Officer asked the fourth respondent as to whether he would like an opportunity to cross-examine, in view

of the fact that fourth respondent's attempt for representation through counsel failed. The fact that he brought the lawyer would show that fourth respondent intended to cross-examine the witness. In such circumstances, particularly having regard to the repercussions, the findings based on the unquestioned or unchallenged statement of one girl student would have on the life and career of the teacher, I would think that it may not be appropriate for this Court to over-turn the concurrent view taken by the Authorities in the matter. Government, in fact, ordered fresh enquiry. I note that the student was studying in the Ixth Standard in the year 2005. In such circumstances, I would think that this may not be a case where I should interfere. No doubt, Government has found that Kum. Razlin Nazar has persevered in her stand and that it was also found that the conspiracy theory is without any basis. But, in the totality of facts, I would think that the order for conducting a fresh enquiry is not to be interfered with. As regards the findings based on the document produced in this Court, I do not think it is part of the charges

against the teacher. No doubt, the genuineness of the document was directed to be considered by this Court and that was called for in order to adjudicate on the charges actually framed against fourth respondent. However, it is not to be understood that if the deposition of the student in question, even after an opportunity of cross-examination is given to the fourth respondent in the fresh enquiry, inspires confidence, it cannot form the basis for entering a finding against the fourth respondent. In such circumstances, the Writ Petition will stand dismissed. There will be no order as to costs.

K. M. JOSEPH, JUDGE

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